

### **REMARKS**

This amendment is responsive to the Final Office Action mailed on May 13, 2010. Claims 1, 2, 4, 6-20, 22, 24-31, 33 and 35-44 are pending in the application and stand rejected. Claims 1, 13, 20, 30, and 44 have been amended. Applicant would like to thank the Examiner for extending the courtesy of a telephone interview with Applicant's representative on June 29, 2010, where the Green reference and potential claim amendments were discussed. In view of the following remarks, Applicant respectfully submits that this application is in complete condition for allowance and requests reconsideration of the application in this regard.

### **Claim Objections**

The Examiner has objected to claim 44 for informalities. Applicant has amended claim 44 to remove the displaced language and overcome the informality. Therefore Applicant respectfully requests that the objection to claim 44 be withdrawn.

### **Rejections under 35 USC §102**

The Examiner has rejected claims 1-2, 4, 6-20, 22, 24-31, 33, and 35-41 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,625,255 to Green et al. (*Green*). Of these claims, claims 1, 13, 20 and 30 are independent claims. Beginning with independent claim 1, this claim has been amended to further clarify that the parameters that characterize the performance of a channel "include a service type and bit error rate provided by a service provider," that physical configuration information of the communications system is "provided by the service provider," the "optimizing uses an optimization module of a spectrum management system," and that the "optimized parameters [are provided] to a line plant simulator, the line plant simulator providing feasibility results." Support for these amendments can be found at least at paragraphs [0042], [0076], [0089], [0106], and FIG. 12 of Applicant's specification. *Green* fails to disclose or suggest the subject matter of these amendments as was discussed during the interview with the Examiner. In order for a reference to anticipate a claimed invention, the reference must teach each and every element in the precise arrangement set forth in the claim. *See* MPEP § 2131. If the reference fails to teach even one of the claimed features, the reference does not and cannot anticipate the claimed invention. Therefore, as amended, independent claim 1 is not anticipated by *Green*, and Applicant respectfully requests that the rejection of claim 1, and of claims 2, 4, and 6-12 which depend therefrom, be withdrawn.

Turning now to independent claim 13, this claim has been amended similar to claim 1 and therefore as amended, is also not anticipated by *Green*. Consequently, Applicant respectfully requests that the rejection of claim 13, and of claims 14-19 which depend therefrom, but withdrawn.

Claim 20 has been amended to clarify that the impairment is not part of the channel transfer function model, but rather an input to that model. Support for this claim amendment may be found at least at paragraphs [0057]-[0059]. As was discussed with the Examiner, the impairment indicated in the Office Action is part of the channel transfer function, and thus *Green* does not anticipate independent claim 20 as amended. As such, Applicant respectfully requests that the rejection of claim 20, and of claims 22 and 24-29 which depend therefrom, be withdrawn.

Claim 30 has been amended to be consistent with claims 1 and 13 and therefore as amended, is also not anticipated by *Green*. Consequently, Applicant respectfully requests that the rejection of claim 30, and of claims 31, 33, and 35-41 which depend therefrom, but withdrawn.

### **Rejections under 35 USC §103**

The Examiner has rejected claims 42-44 under 35 U.S.C. § 103(a) as being unpatentable over *Green*. Claim 42 depends from independent claim 1, claim 43 depends from independent claim 13 and claim 44 depends from independent claim 30. As set forth above, as amended claims 1, 13, and 30 are allowable over *Green*. And because claims 1, 13, and 30 are thus patentable, as a matter of law, dependent claims 42-44 are also patentable. *See, e.g., Hartness Int'l, Inc. v. Simplimatic Eng'g Co.*, 819 F.2d 1100, 1108 (Fed.Cir.1987) (dependent claims patentable if independent claims are patentable over the art). Therefore, Applicant respectfully requests that the rejection of claims 42-44 be withdrawn.

As a final matter, Applicant further notes that the remaining dependent claims recite additional features that further distinguish these claims from the reference cited by the Examiner. However, in the interest of prosecutorial economy, these remaining claims will not be addressed separately herein.

### **Conclusion**

Applicant has made a bona fide effort to respond to each and every requirement set forth in the Office Action. In view of the foregoing amendments to the claims and remarks given herein, Applicant respectfully believes this case is in condition for allowance and respectfully requests allowance of the pending claims. If the Examiner believes any detailed language of the claims requires further discussion, the Examiner is respectfully asked to telephone the undersigned attorney so that the matter may be promptly resolved. The Examiner's prompt attention to this matter is appreciated.

Applicant is of the opinion that a fee for a Request for Continued Examination, which is being filed herewith, is due as a result of this Amendment. Payment of all charges due for this filing is made on the attached Electronic Fee Sheet. If any additional charges or credits are necessary to complete this communication, please apply them to Deposit Account No. 23-3000.

Respectfully submitted,

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Date

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